Supreme Court, U.S.
FILED
JUL 5 2000
OFFICE OF THE CLERK

No. 00 380

SUPREME COURT OF THE UNITED STATES

BERNICE BURNS PRO SE,

- PETITIONER,

VS.

ADA S. McKINLEY COMMUNITY SERVICE

CAROL WINN & LORI JOHNSON WHITE

-RESPONDENTS,

On Petition For A Writ Of Certiorari
To The Supreme Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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14 pp

Question Presented

1) Whether Petitioner, Bernice Burns Pro Se have the right to sue for damage from Defendant-Respondent Ada S. McKinley Community Services, Carol Winn, and Lori Johnson White for committing negligence and age discrimination?

2) Whether Judge James J. Jarzak of the Circuit Court of Cook County, Illinois First District, properly dismissed petitioner Pro Se Complaint pursuant to 735,Il.,cs,5/2-617 and 735,Il.,cs,5/3-619, this case was not assigned to his calendar for 2 p.m., but was assigned for trial call for February 25, 1999, 9:30 by another Judge?

3) Whether the First Judicial District and the Second Division violated the Petitioner's rights by ruling on the petition with out a hearing or oral argument on the case that was filed for the Appellate Court to grant or deny the petition?.

4) Whether the Petitioner should have been allowed, by the Circuit Court Judge, James J Jorzak to respond to the Defendant combining motion to dismiss before he dismissed the complaint with prejudice.

Table of Contents

Page

Opinions 1
Jurisdiction 1
Constitutional and Statutory Provisions Involved 2
Statement of the Case 3
Reasons for Granting the Writ 4
Conclusion 5

Index to Appendices

Appendix A Illinois Supreme Court Order
Appendix B Appellate Court of Illinois Order
Appendix C Appellate Court of Illinois Order
Appendix D Circuit Court of Cook County Order

Tables of Authorities Cited

Cases

1. Losko v. Merier, 1946, 394 Ill 71NE 2d 162 4

2. Gordon and Co v. Board of Government of Federal Reserve System D.C. Mass (1970), 317 Supp. 1045 5

3. Washington v. Baenziger, N.D. Cal. 1987, 673 f Supp. 1478 5

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the Illinois Supreme Court to review the merits appears reproduced at Appendix A to the petition and is unpublished. The opinion of the Appellate Court of Illinois appears reproduced at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the Illinois Supreme Court decided my case was April 5, 2000. A copy of that decision appears at Appendix A.

A timely filed petition for rehearing was thereafter denied on the following date: December 22, 1999, and a copy of the order denying rehearing appears at Appendix B.

A timely filed brief was filed April 20, 1999. The order was affirmed by the Appellate Court of Illinois First Judicial District, on September 28, 1999. The affirmed order appears at Appendix C.

The Circuit Court of Cook County, Illinois First District dismissed the Petitioner's complaint on January 12, 1999. The dismissal order appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C 1257(a).

Constitutional and Statutory Provisions Involved

16 B Am Jur 2d Constitutional Law Section 769 Access to Court

STATEMENT OF THE CASE

The Petitioner Bernice Burns Pro Se filed a Pro Se complaint in the Circuit Court of Cook County, Illinois First District on December 3rd, 1998, against the Defendant Respondent Ada S. McKinley Community Service, Carol Winn, and Lori Johnson White for committing a wrong and age discrimination against the Petitioner Pro Se.

On January 12, 1999, the Petitioner Pro Se Complaint was dismissed. The Circuit Court Judge, James J. Jorzak dismissed the Petitioner's complaint, pursuant to 735 IL, CS, 5/2-615 and 735 IL, CS, 5/3-619 with prejudice.

This case was not assigned to Judge James J. Jorzak for a trial call on January 12 1999 for a 2 p.m. call; but set for a trail call on February 25, 1999 for a 9:30 a.m. by another judge, Judge Lambros J. Kutrubis. The order of the Circuit Court appears at Appendix D, dated January 12, 1999.

The Petitioner, Bernice Burns, Pro Se timely filed her brief in the Appellate Court of Illinois First District on April 20, 1999. On September 28,1999, the order was affirmed by the Appellate Court of Illinois First Judicial District Second Division. This order is attached as Appendix C, dated September 28, 1999.

There was a timely filed Petition in the Appellate Court on this matter, filed by Petitioner, Bernice Burns, Pro Se for rehearing for misinterpreting of material facts. The Petition was denied on December 22, 1999. The order of the denial is attached as Appendix B, dated December 22, 1999.

This case was taken to the Supreme Court of Illinois to review the Appellate and Circuit Court actions. The Supreme Court denied the petition on April 5, 2000 a copy of denial appears at Appendix A.

REASON FOR GRANTING THE PETITION

This petition should be granted because the Courts have committed prejudicial errors against Petitioner Pro Se. On January 12, 1999 the Circuit Court Judge James J Jorzak dismissed Petitioner complaint pursuant to 735 IL.CS, 5/2-615 and 735 IL.CS, 5/3-619 with prejudice. This case was not assigned to the Circuit Court of Cook County, Illinois First District Judge James J Jarzak's calendar for January 12, 1999 for a 2 p.m. call; but was set for trial call February 25, 1999, by another judge.

The circuit court Judge James J. Jorzak is guilty of prejudice error for his conduct, dismissing the case with out the proper hearing, for the petitioner to express her oral argument in this matter. This is a violation of the petitioner's right under the due process of law, and the 14 Amendment to the constitution of the United States.

The attorney Yvette Heintzelman for the Defendant-Respondent Ada S. McKinley Community Services is guilty of negligence for filing a motion to dismiss the complaint pursuant to 735Ilcs 5/2-615 and 735Ilcs 5/3-619 stating that the Plaintiff-Petitioner sued the wrong party. Ada S. McKinley Community Services, Carol Winn, and Lori Johnson White are the parties who are guilty of negligence for not performing their duties as required by 89 III code 380 section 402.4c. The Petitioner's complaint is not defected pursuant to 735Ilcs 5/2-603 Losko v. Merier, 1946, 394 Ill 71NE 2d 162,

The Plaintiff did not sue the wrong party pursuant to Ch 7-5 section 702 judicial review which states, person suffering legal wrong because of agency action is entitle to judicial review Gordon and Co v. Board of Government of Federal Reserve System D.C. Mass (1970), 317 Supp. 1045. The Petitioner believes that she is not required to plead detailed evidentiary matters, Washington v. Baenziger, N.D. Cal. 1987, 673 f Supp. 1478.

Before the Petitioner Pro Se brought this matter to the Court the petitioner Pro Se made many attempts to resolve this matter but was unsuccessful. Wherefore the Petitioner Pro Se pray that this honorable Supreme Court of the United States grant this petition in favor of the Petitioner Pro Se and against the Respondents, Ada S. McKinley, Carol Winn and Lori Johnson White.

Conclusion

The petition for writ of certiorari should be granted for all of the reason set forth above.

Respectfully Submitted

Bernice Burns

Ms. Bernice Burns

Appendix A

ILLINOIS SUPREME COURT
JULEANN HORNYAK CLERK
SUPREMECOURT BUILDING
SPRINGFIELD, ILLINOIS 62701
92170 782-2035

88821

April 5, 2000

Mr. Bernice Burns
2249 East 96th Street
Chicago, IL 60617

No. 88821- Bernice Burns, petitioner, v. Ada S. McKinley Community Service, et al., respondents. Leave to appeal, Appellate Court, First District.

The Supreme court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 27, 2000.

Appendix B

No. 1-99-0206

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICAL DISTRICT

BERNICE BURNS Plaintiff-Appellant,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY
V.	)	No. 98M1163649
ADA S. McKINLEY COMMUNTY SERVICE, CAROL WINN and LORI JOHNSON WHITE, Defendants-Appellees.	)	THE HONORABLE JAMES J. JORZAK, JUDGE PRESIDING.

ORDER

This matter having come on to be heard on the petition for rehearing of plaintiff-appellant, and the court being advised of the premises,

IT IS HEREBY ORDERED THAT THE PETITION IS DENIED.

Order Entered
Dec 22, 1999
Appellate Court, First District

Gilbert S. Marchman, Clerk of the Appellate Court, First District

Appendix C1

SECOND DIVISION
SEPTEMBER 28, 1999

No. 1-99-0206

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BERNICE BURNS, Plaintiff-Appellant,	)	Appeal from the Circuit Court of Cook County.
v.	)	No. 98 M1 163649
ADA S. MCKINLEY COMMUNITY SERVICE, CAROL WINN and LORI JOHNSON WHITE, Defendants-Appellees	)	Honorable James J. Jorzak, Judge Presiding

ORDER

Plaintiff Bernice Burns appeals pro se from dismissal of her complaint in which she sought damages for defendants' recommendation that she not be licensed as a foster parent. She maintains that the trial court erred in dismissing her complaint.

On December 3, 1998, plaintiff filed a complaint alleging that she had completed all the requirements to receive a foster parent license in December 1996 but that defendant Ada S. McKinley Community Service(McKinley) wrongly refused to recommend her to the Department of Children and Family Services (DCFS) because of her age. Plaintiff also alleged that she received a letter dated November 7, 1997, stating that McKinley was not going to recommend her because of her "non-

cooperation." A copy of the letter was not attached. Plaintiff alleged that defendant Lori Johnson White wrote the letter but no allegations were directed against defendant Carol Winn. Plaintiff asked for $25,000 in damages.

Defendants appeared and on January 4, 1999, filed a combined motion to dismiss pursuant to sections 2-615 and 2-619 of the Civil Practice Law. 735 ILCS 5/2-615, 2-619. 2-619.1 (West 1996). The motion alleged that McKinley was a not-for-profit foster care agency which contracted with DCFS to provide foster care to children in its custody. Defendants acknowledged that plaintiff had submitted an application to McKinley to be licensed consideration, defendants had recommended that DCFS deny plaintiff's application. Defendants did not know whether DCFS had denied plaintiff's application to become a licensed foster parent.

In their motion, defendants denied that they had authority to issue foster parent licenses and maintained both that plaintiff had sued the wrong parties and also that her complaint was premature.

Defendants also alleged that the trial court lacked subject matter jurisdiction under section 8(d) of the Court of Claims Act. 705 ILCS 505/8(d) (West 1996). Defendants maintained that they were agents of the State of Illinois, paid to investigate individuals who applied for foster parent licenses and as such were entitled to governmental immunity.

Finally, defendants alleged that plaintiff had failed to exhaust her administrative remedies through the DCFS' administrative procedures once her application was denied. The motion was supported by the affidavit of Jacqueline Grant who was McKinley's licensing coordinator.

On January 12, 1999, the trial court granted defendants' section 2-619 motion to dismiss. There is no transcript of the hearing in the record on appeal. Plaintiff has appealed.

Plaintiff contends that the trial court erred in dismissing

her complaint with prejudice. We decline to dismiss plaintiff's appeal on the grounds that her notice of appeal was defective. A notice of appeal is to be liberally construed. Burt v. First Charter Service Corp., 76 Ill. 2nd 427, 433 (1979).

Involuntary dismissal of a complaint is reviewed de novo. Casualty Insurance Co. v. Kendall Enterprises, Inc., 295 Ill. App. 3d 582, 586 (1998). The purpose of a motion to dismiss under section 2-619 of the Civil Practice Law is to dispose of issues of law and easily proved issues of fact at the outset of a case. Zedella v. Gibson, 165 Ill. 2d 181, 185 (1995). The question on appeal is whether the existence of a genuine issue of material fact should have precluded the dismissal or, in the absence of such an issue, whether dismissal is proper as a matter of law. Kedzie & 103rd Currency Exchange, Inc. v. Hodge, 156Ill. 2d 112, 116-17. An involuntary dismissal may be affirmed on any grounds supported by the record, regardless whether the trial court relied on those grounds. Wood v. Village of Grayslake, 229 Ill. App. 3d 343, 348-49 (1992).

Here, defendants' motion to dismiss alleged that defendants did not have the authority to grant or deny a license to plaintiff to become a foster parent, that McKinley merely made a recommendation to DCFS which, in this case, had not made a decision. 89 Ill. Adm. Code 383.1, 402.2, 402.4 (1996). In her appellate brief, plaintiff acknowledges that DCFS makes the ultimate decision, but she does not state whether DCFS has denied her a license. Instead, she now states that defendants failed to forward her application to DCFS. These are new facts which cannot be considered for the first time on appeal. Plaintiff's action in the circuit court was premature and she has sued the wrong parties.

Accordingly, the judgment of the circuit court is affirmed.

Judgment affirmed.

COUSINS, P.J., with McBride and Gordon, JJ.,Concurring.

Appendix D

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

BERNICE BURNS,	)	
	)	
Plaintiff	)	
	)	
vs,	)	Case No. 98M1163649
ADA S. MCKINLEY COMMUNITY SERVICES, CAROL WINN AND LORI JOHNSON WHITE,	)	Room 1106
	)	
	)	
Defendants,	)	

ORDER

Defendants' motion to dismiss 2-619 was presented to the Court. Plaintiff Bernice Burns was present and Defendants were represented by Yvette Heintzelman.

The Court having heard and considered the parties' motion and arguments grants Defendants' motion to Dismiss under 735ILCS 5/2-619.

JUDGE JAMES J. JORZAK
JAN 12 1999
Circuit Court 1707

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